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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,562	08/09/2001	G. David Jang	S63.2-9950	6986

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VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

PREBILIC, PAUL B

ART UNIT PAPER NUMBER

3738

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/925,562	Applicant(s) JANG, G. DAVID	
	Examiner Paul B. Prebilic	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-36, 39-43, 47 and 49-62 is/are pending in the application.
 4a) Of the above claim(s) 60 to 62 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 34-36, 39-43, 47 and 49-59 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

With the remarks filed on June 28, 2006, Applicant indicated that claims 39-43 and 60-62 were withdrawn. However, the status indicators for claims 39 to 43 indicate that these claims are still active for examination. For this reason, the Applicant is respectfully requested to provide a correct copy of the claims with status indicators of "withdrawn" for claims 39-43. Claims 39-43 will be treated on their merits in this Office action.

Election/Restrictions

Claims 60 to 62 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 8, 2004.

Claim Objections

Claim 34 is objected to because of the following informalities:

On lines 19 and 32 of claim 34, the language "is closer one" is grammatically awkward in the context it is used. The Examiner suggests inserting "to" after "closer" in order to overcome this objection. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

Art Unit: 3738

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 34-36, 39-43, and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Pinchasik et al (US 5,449,373). Pinchasik anticipates the claim language where the first expansion struts as claimed are in the left-most section (102) of Pinchasik (see Figures 2A to 2C), the second expansion struts are in the middle section (102), and the third expansion struts as claimed are in the right most section (102). The first connecting strut column is made up of links (112) and the links are clearly closer to the top struts of the expansion pair on the left end and to the bottom of the pair on the right end thereof.

Claims 51-57 and 59 are rejected under 35 U.S.C. 102(e) as being anticipated by Globerman (US 5,776,161). Globerman anticipates the claim language where the first expansion column as claimed is segment (65) of Globerman, the second expansion column as claimed is the other segment (65), the connector column as claimed is segment (68), and there are four linear sections along the connector (see claim 53) from where segment (68) connects to one segment (65) to another; see Figure 21.

"Collinear" is denoted as "passing through single line: lying on or passing through a single straight line" (Encarta World English Dictionary, North American Version online at <http://encarta.msn.com/encnet/features/dictionary/dictionaryhome.aspx>). There is no special definition for "collinear" found in the specification and it is used in a manner consistent with the dictionary definition cited. Therefore, "collinear" only requires that one can draw a single straight line through elements, in the present case, through struts. Since one can draw a single straight line through struts of adjacent segments,

Art Unit: 3738

the claim limitation requiring collinearity is fully met. There is no requirement in the claims that the struts be elongate, have an axis, or that the single straight line be along any particular axis or even along the surface of the tube.

Furthermore, since "a distal end region" of the strut pair from which the first connector column extends is not necessarily related to the distal end of the expansion column previously set forth, "a distal end region" could be about anywhere on the strut pair including the left edge or right edge of a strut.

With regard to claim 57, since the pattern shown in Figure 21 continues, the claim language requiring a third expansion column is inherently present thereon.

Claims 51, 52, 54, 55, and 57-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US 6,348,065). Brown anticipates the claim language where the same analysis of the claims explained with regard to the Globerman rejection supra is applied herein; see Figures 1 and 2 of Brown.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinchasik et al (US 5,449,373) in view of Richter et al (US 6,156,052). Pinchasik meets the claim language as explained in the Section 102 rejection above but fails to disclose a strut with a proximal end connected to one strut and the distal end thereof

Art Unit: 3738

connected to another strut as claimed. However, Richter teaches that is was known to use different strut columns with the same connector columns. Specifically, Richter discloses using a strut column with a strut having a proximal end connected to one strut and the distal end thereof connected to another strut; see Figures 2A and 2B and compare it to Figures 3, 4, and 14 (Note that Richter interchanges a strut column like that disclosed by Pinchasik with one that is like the one claimed.). Therefore, it is the Examiner's position that it would have been obvious to replace or interchange the sections (102) of Pinchasik with the strut column disclosed in Richter in Figures 3, 4, and 14 for the same reasons that Richter does the same.

Response to Arguments

Applicant's arguments filed June 28, 2006 have been fully considered but they are not persuasive.

In traversing the Pinchasik Section 102 rejection, the Applicants argue that Pinchasik does not have a connector end that is closer to one strut than to another. However, the Examiner respectfully disagrees and asserts that the end of claimed invention and of Pinchasik is not necessarily limited to the very tip of the connector as apparently understood by the Applicant. Rather, giving the claim language its broadest reasonable interpretation, the connector end can be interpreted as up to half the connector length. For this reason, the claim language is considered fully met.

Applicants traverse both the Globerman and Brown rejections by arguing that there the struts are not collinear because the term "collinear" has a special definition requiring that the struts share the same longitudinal axis. However, upon review the

Art Unit: 3738

portions cited by Applicant as providing a special definition (particularly, Figure 4B and paragraph [0089] of the related publication US 2002/0062149), the Examiner could only find an exemplary usage of the term. No definition of "collinear" was provided. *"For example, an inventor may choose to be his own lexicographer if he defines the specific terms used to describe the invention 'with reasonable clarity, deliberateness, and precision.' Such as definition may appear in the written description"* *Teleflex, Inc. v. Fiosa No. Am. Corp.*, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002) . Clearly, the Applicants usage of the term "collinear" is not clear, deliberate or precise. For this reason, the term "collinear" has been given its ordinary definition.

Finally, the Applicant traverse the rejection of claim 59 by Brown by arguing that Brown does not disclose a curved portion in the connector. However, upon review of claim 59, it is clear that claim 59 does not require a curved portion in the connector. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3738

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Prebilic
Primary Examiner
Art Unit 3738